

REMARKS

Claim 1 has been amended herein to now include octylmethoxy cinnamate as an element of the water-in-oil emulsified sunscreen cosmetic of the present invention. Support for the amendment of claim 1 can be found in the Specification on page 41, Table 3, paragraph [0054]. The present amendment is deemed not to add new matter. Claims 1, 4 and 17 remain in the application.

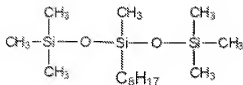
Reconsideration is again respectfully requested of the rejection of claims 1, 4 and 17 under 35 U.S.C. 103(a) as being unpatentable over the previously cited Ferrari et al. reference, (US 2003/0068348, published on 04/10/03), the previously cited Tanaka reference (JP 2001-302455, machine translated, published on 10/31/2001, and cited in a previously filed IDS), the newly cited Masuda et al. reference, (WO 02/26198, published on April 4, 2002), the newly cited Yoneyama et al. reference, (US Patent No. 5362482, published on November 8, 1994), and the previously cited Simon reference (US Patent No. 6346256 published on February 12, 2002).

As previously argued, the present inventors found that by adding a (d) lipophilic active material to the sunscreen cosmetic of the present invention results in a water-in-oil emulsified sunscreen cosmetic that spreads easily, and has a fresh sensation when applied to the skin, consideration not found in any of the **5 cited references**. In addition, it was unexpectedly discovered that by combining (a) the claimed hydrophobic zinc oxide powder (b) a volatile silicone, (c) *1-10 wt% caprylylmethicone*, and (d) *0.5-4 wt%* of a polyoxyalkylene-modified organopolysiloxane, as illustrated by the test results shown in Table 3, it is possible to obtain a sunscreen cosmetic that has a long lasting coverage effect and excellent ease of washability, and

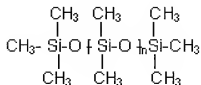
thus they arrived at the present invention. In contrast, as illustrated in Table 3, Comparative Example 1, which does not include the claimed caprylylmethicone, *but rather dimethyl silicone*, had a noticeably lower ease of washability (see Specification, page 41, line 7, to page 42, line 2).

In the Advisory Action, the Examiner has dismissed these showings of unexpected results as being unpersuasive, essentially arguing that to be persuasive, comparative tests must be presented which compare the present inventive composition to the composition of Ferrari, et al. which comprises a liquid lipid phase containing silicone oil. In particular, the Examiner has mentioned PDMS's that are liquid at room temperature, phenylsilicones, etc., which "are closely both structurally and functionally related compounds as the caprylylmethicone", and which are "expected to behave similar as the alleged caprylylmethicone". However, the PDMS's (polydimethyl siloxanes) of Ferrari, et al. are believed to encompass the dimethyl silicone of Comparative Examples 1 and 3 of the present invention.

In response to same, the undersigned respectfully submits that the dimethyl silicone component of Comparative Examples 1 and 3, as shown in Table 3 below, is a silicon oil which is much closer structurally to the caprylylmethicone component claimed herein. In particular, the caprylylmethicone as claimed herein, and the dimethyl silicone shown in the Comparative Examples 1 and 3, have the following chemical structure structure:



CAPRYLYLMETHICONE



DIMETHYL SILICONE

[Table 3]

	Example 1	Example 2	Comparative example 1	Comparative example 2	Comparative example 3
(e) Ion-exchange water	30.2	-	30.2	30.2	20.2
1,3-butylene glycol	5	-	5	5	5
(b) Octamethylcyclotetrasiloxane	28	47.5	28	28	28
(c) Caprylylmethicone	5	15	-	5	-
Dimethyl silicone (6cs)	-	-	5	-	5
(d) Branched polyether-modified silicone (Shin-Etsu Chemical Co., Ltd. KF-6028)	1	-	1	1	1
(d) Ppolyether-modified silicone (Shin-Etsu Chemical Co., Ltd. KF-6017)	-	-	-	-	-
(a) Hydrophobic zinc oxide powder (Manufacturing Ex. 1)	18	25	-	-	-
5% methyl hydrogen-treated zinc oxide (FINEX-50 made by Sakai Chemical Industry Co., Ltd.)	-	-	18	18	18
Spherical PMMA (Microsphere M306)	5	5	5	5	5
Octylmethoxy cinnamate	7.5	7.5	7.5	7.5	7.5
Edetate	0.1	-	0.1	0.1	0.1
Phenoxy ethanol	0.2	-	0.2	0.2	0.2
Long lasting coverage (water-repelling and oil-repelling characteristics)	◎	○	○	○	○
Ease of washability	◎	○	×	△	△

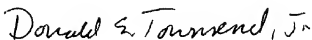
As shown above, it is clear that, structurally, the silicone oil (Dimethyl silicone; 6cs: liquid at room temperature) utilized in the Comparative Examples 1 and 3 are very close, and would thus normally be expected to exhibit similar characteristics. In fact, it is believed that the dimethyl silicone utilized in the compositions of the comparative examples shown in the instant application is closer, structurally, to the claimed caprylylmethicone than the silicone oils taught by Ferrari, et

al. However, the comparative tests presented herein are evidence that, in fact, such a structurally similar silicone oil *does not* provide the unexpected results provided by the present inventive composition. Accordingly, it is again strongly urged that the comparative examples shown in Table 3 herein show unexpected results sufficient to overcome the instant rejection, and should thus be reconsidered by the Examiner.

In addition to the showings above, claim 1 has now been amended herein to additionally comprise octylmethoxy cinnamate. As shown in Table 3, the compositions of Examples 1 and 2, which were shown to exhibit unexpected results, both include octylmethoxy cinnamate. It is believed that the addition of this component to the claimed composition further narrows the scope of the claim, and in conjunction with the unexpected results discussed above, are justification for the Examiner no longer maintaining this rejection. Withdrawal of the rejection is accordingly respectfully requested.

In view of the foregoing, it is respectfully submitted that the application is now in condition for allowance, and early action and allowance thereof is accordingly respectfully requested. In the event there is any reason why the application cannot be allowed at the present time, it is respectfully requested that the Examiner contact the undersigned at the number listed below to resolve any problems.

Respectfully submitted,

A handwritten signature in black ink that reads "Donald E. Townsend, Jr." in a cursive script.

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